

# **Exhibit A - Policy Statement to be Published in the Washington State Register**

## **Policy Statement**

The following represents the Department of Ecology's policy regarding the limitations, and proper use of the Stormwater Management Manual for Western Washington.

### ***The Stormwater Management Manual for Western Washington is Not a Regulation***

The Manual does not have any independent regulatory authority and it does not establish new environmental regulatory requirements or standards. The Manual is a guidance document which provides local governments, state and federal agencies, developers and project proponents with a set of stormwater management practices to assist in the design of stormwater site or pollution prevention plans. Other stormwater technical guidance documents have been prepared or approved by Ecology, and the current list of approved stormwater technical guidance documents can be found on Ecology's website, at <http://www.ecy.wa.gov>. If these practices are implemented correctly, Ecology believes they should result in compliance with existing regulatory requirements for stormwater – including compliance with the Federal Clean Water Act, Federal Safe Drinking Water Act and State Water Pollution Control Act.

### **Presumptive vs. Demonstration Approach**

Following the Manual (the presumptive approach) or other technical guidance documents approved by Ecology, is not the only way to properly manage stormwater runoff. The Manual or other stormwater technical guidance documents approved by Ecology, are intended to provide project proponents, regulatory agencies and others with technically sound stormwater management practices which are *presumed* to protect water quality and satisfy the state AKART requirement. All project proponents have the option of not following the stormwater management practices in the Manual or other technical guidance documents approved by Ecology. However, if a project proponent chooses not to follow the practices in the Manual or other technical guidance documents approved by Ecology, then the project proponent may be required to individually *demonstrate* that the project will not adversely impact water quality and show that the alternative approach is protective of water quality and satisfies state and federal water quality laws. In this case, whether the project proponent is required to demonstrate compliance with environmental laws or not will depend on the underlying project approval or permit requirements established in federal, state and local laws, regulations and ordinances.

Included within the Stormwater Management Manual for Western Washington are provisions for Adjustments to the minimum requirements in the Manual (Volume 1, chapter 2.7). There are also provisions for Exceptions and Variances to the minimum requirements in the Manual (Volume 1, chapter 2.8). The provisions for adjustments, exceptions and variances within the Manual are available to all project proponents, including local governments, that follow the Manual. In addition, project proponents or permittees may select BMPs which are functionally equivalent to BMPs in the manual in lieu of strict adherence to the Manual BMPs. If required

by a permit or other authorization, project proponents or permittees may be required to demonstrate functional equivalency.

Both the presumptive and demonstrative approaches are based on and result from existing federal and state laws that require stormwater treatment systems to be properly designed, constructed, maintained and operated to:

- Prevent pollution of state waters and protect water quality, including compliance with state water quality standards;
- Satisfy state requirements for all known available and reasonable methods of prevention, control and treatment (AKART) of wastes prior to discharge to waters of the state; and
- Satisfy the federal technology based treatment requirements under 40 C.F.R. part 125.3.

Under the demonstration approach, the expectations for providing technical justification of stormwater management practices will depend on the complexity of the individual project and the nature of the receiving environment. In each case, the project proponent may be asked to document to the satisfaction of the permitting agency or other approval authority that the practices they have selected will result in compliance with the water quality protection requirements of the permit or other local, state, or federal water-quality-based project approval condition.

When a discharge permit or other water-quality-based project approval is required from the Department of Ecology, project proponents are required to document the technical basis for the design criteria used to design their stormwater management BMPs. This includes: how stormwater BMPs were selected; the pollutant removal performance expected from the selected BMPs; the technical basis for the performance claims for the selected BMPs; and an assessment of how the selected BMPs will comply with state water quality standards and satisfy state AKART requirements under chapter 90.48 RCW and the federal technology-based treatment requirements.

Project proponents who choose to follow the stormwater management practices contained in approved stormwater technical manuals are presumed by Ecology to have satisfied this demonstration requirement and in most cases will not be required to provide technical justification to support the selection of BMPs for the project. Following the stormwater management practices in this Manual or other technical guidance documents approved by Ecology means adhering to the guidance provided for proper selection, design, construction, implementation, operation and maintenance of BMPs.

### **How is the Manual implemented?**

Local government staff may use the Manual as a reference for developing stormwater requirements for new development and re-development, reviewing stormwater site plans; checking source control, runoff treatment and flow control facility designs; and for providing technical advice in general. Private industry may use the Manual for information on how to develop and implement stormwater site plans and as a reference for technical specifications of Best Management Practices (BMPs) to prevent and control stormwater pollution.

The Manual itself has no independent regulatory authority. The Minimum Requirements in chapter 2 and technical guidance in the Manual only become required through:

- Ordinances and rules established by local governments; and
- Permits and other authorizations issued by local, state, and federal authorities.

In the absence of a permit or other regulatory requirement local jurisdictions may adopt and apply all or a portion of the Minimum Requirements, thresholds, definitions, BMP selection processes, and BMP design criteria of this Manual through local ordinances. Local jurisdictions adopting only portions of the Manual or other technical guidance documents approved by Ecology may consider adopting an alternative approach similar to the demonstration approach described in this statement. Staff at local governments and agencies with permitting jurisdiction may use this Manual or other technical guidance documents approved by Ecology in reviewing Stormwater Site Plans, checking BMP designs, and providing technical advice to project proponents. Such use by local governments may consider local stormwater issues and allow for site-specific analyses and the application of professional judgment.

Federal, state, and local permits may refer to this Manual or the BMPs contained in this Manual. In those cases, elements of the Manual or the Manual itself may become permit requirement only if the authorities and standards under which the permit is issued support such a requirement. It is not permissible or appropriate to include the minimum requirements, thresholds, definitions, BMP selection processes, and BMP design criteria of this Manual as permit conditions or use the Manual as a review standard solely because they are published in the Manual or part of the Manual.

### **Questions?**

If there are questions about the proper use and application of Ecology's Stormwater Management Manual for Western Washington please contact the Department of Ecology's Water Quality Program at (360) 407-6000.